

Jury Asks Inquiry in Fay Case

U. S. Panel Scores Prosecution by Rossbach

Angered by the manner in which the Joseph S. Fay income tax evasion case was "messed up," the Federal Grand Jury, in a move virtually unprecedented in New Jersey, is planning to investigate U. S. Attorney Rossbach's prosecution.

Two members of the jury which indicted Fay voiced the jury's sentiments on Fay's acquittal in open court before Senior Federal Judge Fake yesterday in the presence of the entire jury. One of them, A. Richard Kallenberg of 35 Lorraine street, Glen Ridge, raised the question whether Rossbach was derelict in his duty and whether he could be "charged with malfeasance of office or something."

John M. Durling of 136 Seton place, South Orange, foreman of the jury, today said that he preferred to make no comment at present, but said that Rossbach's handling of the case will be considered further at Tuesday's session of the jury.

Clark Interested In Jury's Probe

Washington Bureau.

WASHINGTON—Informed of the Newark Federal Grand Jury's decision to investigate handling of the Fay case, Attorney General Clark today said he will direct his office "to look into the situation and incorporate the jury's findings in the investigation of the case."

Douglas W. McGregor, assistant to the Attorney General, who was assigned by Clark earlier to probe the handling of the Fay case, said he is "naturally interested" in the Grand Jury's action and will study a transcript of its session with Judge Fake.

"It was a novel action, to say the least," McGregor commented.

The other spokesman for the jury before Judge Fake yesterday was Albert I. Stiles of 43 Druid Hill road, Summit, who sought vainly to be relieved from further service on the Grand Jury because he felt that "my function here is useless."

Stiles said he felt the Fay case was handled "ineptly."

Rossbach, reached last night, said he had "no comment" on the latest development in the case.

Was Against Indicting

Stiles opened the surprise afternoon session by addressing Fake:

"I was one of a minority consisting, I believe, of five members of the jury, who voted against the indictment of Joseph S. Fay. I did so feeling morally convinced that he should be indicted... but feeling that the case of the government was so weak and so ineptly presented that a conviction was highly improbable."

"It seems to me that the effect of this trial has been to bring the administration of justice in the District of New Jersey into—I might use too strong language; if I do, your honor will pardon me—more or less in contempt."

Prefacing his remarks with the comment that "so many of the group here have the same opinion of this Fay case," Kallenberg said to Fake:

"We have all noticed the same thing. We have had an awful hard time trying to determine why more

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complete, better evidence—more far-reaching evidence—hadn't been received.

Mad Over Messing Up

"The thing that struck me hardest was this Fay case... We resent the fact that the case was handled as it was. A number of us are really mad about the thing and feel that we are justifiably mad about it, the way the case was, as we call it, messed up."

"Now what we can't get through our minds is why the situation in the Fay case, which we feel is the most important case that we have had, was allowed to go the way it did."

The court: "Was allowed what?" Kallenberg: "Allowed to be, as I crudely expressed it, messed up the way it was, and whether Mr. Rossbach, to mention names, was not derelict of duty, or whatever he could be charged with, malfeasance of office or something, in that direction."

Wasting Time

"We are not satisfied, and to put it again possibly crudely, we feel that we are really wasting our time if we are going to come here and sit and pass out indictments, then have them improperly handled."

"The thing we can't possibly condone is the fact that after we have passed down this indictment, the thing is so horribly handled."

Direct discussion of the possibility of a jury investigation was opened by Stiles:

"I believe, your honor, that the jury is in substantial agreement with much that I have said, and for your information I would be very much pleased if you would poll them on the subject in some appropriate way."

The court: "Well, on what subject? I don't get what your subject is."

Stiles: "Well, I am very sorry that I lack the ability to make it clear to your honor."

Have Right to Act

The court: "Well, the difficulty is this: that you feel there has been a mistake in a particular case, the Fay case. Then I will instruct you this way: that you have a perfect right as a Grand Jury to investigate that case. There is no reason why you can't."

Kallenberg, seeking more explicit instructions, then said: "You hear about Grand Jury investigations and so on and so forth, and what I wanted your honor to say was what you finally said to Mr. Stiles, that we could start an investigation. We have no way of knowing how to start an investigation, if we should want to, but we want to talk it over, and we thought that possibly you could tell us what could be done about it. We are not satisfied."

Judge Fake made no specific reply at this point.

Kallenberg subsequently asked Fake if the investigation would have to be held in open court, and the judge replied that it "wouldn't necessarily have to be in public."

Asks to Withdraw

Stiles, asking Fake for authority to withdraw from the jury said that his presence on the body is "useless."

"May it please the court," he said, "I have served on this November Grand Jury to the best of my ability for the last three months in the belief that in so doing I was performing my civic duty."

"The time has come when I must feel—I will tell you, your honor, very frankly about it, because it seems to me that it is my duty to do so—that I am no longer of that frame of mind. It seems to me that my function here is useless. I am very regretful to say that, but under the circumstances, I respectfully ask your honor to discharge me from further duty with this jury."

Fake replied that such action was beyond his power.

U. S. Investigation

Fay, an international vice president of the Operating and Hoisting Engineers and business agent of the union's Local 825 of Newark, was acquitted January 15 of failure to pay more than \$118,000 in income taxes for 1940, 1941 and 1942.

Attorney General Clark expressed disappointment at the verdict and directed an investigation, on which there has been no report. The government alleged that Fay had obtained \$160,000 from one contractor and \$30,000 from another. Fay admitted getting \$70,000, but said it was given to other persons or spent on counter-picketing and entertainment.

Fay and James Bove, another labor leader, were convicted in April, 1945, in New York on charges of extortion and conspiracy to extort from the same contractors and others. They were sentenced to 8½ to 15 years in Sing Sing. An appeal will be heard March 21 by the U. S. Supreme Court.

qu岸: "Have you ever majored in psychology?" Hartshorne permitted a question whether Flynn had ever "taken any courses in psychology." Flynn said he had not.

Raps Contractors In Fay Tax Probe

NEW YORK—Difficulty in obtaining information from big contractors in his investigation of Joseph S. Fay and James V. Bove, labor leaders, was criticized last night by District Attorney Frank S. Hogan. He said:

"Dozens of the biggest contractors in the United States were persistently questioned. Not a single one of these distinguished citizens volunteered a word of information. On the contrary, I am sure they regarded, and they certainly treated, the police and my assistants as intruders."

Fay, who was acquitted in Newark last month of an income tax evasion charge, is fourth vice president of International Union of Operating and Hoisting Engineers and business agent of Local 825 of Newark. Bove, now serving 15 years in prison, was vice president of the Hod Carriers' and Common Laborers' International Union.

Both were convicted in New York of extortion charges in connection with the construction of a New York

Fay case criticized by grand jurors

One says he believes Rossbach derelict in prosecution

Two members of the federal grand jury which indicted Joseph S. Fay, building trades labor leader, on charges of income tax evasion, yesterday in federal court criticized the handling of the case and the acquittal of Fay. A third juror told the court the grand jury's time was taken up with unimportant matters.

Albert L. Stiles told Federal Judge Guy L. Fake that he believed Fay should have been indicted, but that he voted against indictment because of "the weak manner" in which the case was presented to the jury.

A. R. Kallenberg, another grand juror, said he believed U. S. Attorney Edgar H. Rossbach had been "derelict" in prosecution of Fay, who was acquitted last month.

The jurors made their remarks in a conference with Fake after they had announced a desire to ask some questions.

ROSSBACH TO REPLY

Rossbach, who was not in the courtroom, said later he would reply after "examination of the stenographic transcript."

Atty. Gen. Clark said recently in Washington that he was investigating the trial of the labor leader after he had received "some complaints" about its prosecution. Rossbach said when this was disclosed that he believed the jurors deliberated conscientiously and made their finding on the basis of the evidence.

Stiles said "the Fay verdict brought justice in New Jersey in more or less contempt."

The third juror was Mrs. Anne T. Case, 306 Mt. Kemble ave., Morristown. It was she who stated that too many unimportant cases are being presented before the tribunal.

Fake, after hearing the jurors, replied, without making reference to any government official. He reviewed law procedure in the United States, explaining that a Grand Jury was not a trial jury.

GRAND JURY'S RIGHTS

"You are a law unto yourself," Fake said, explaining the members have the right to examine witnesses, and to demand additional evidence if desired. Fake further stated the members could call upon the Federal attorney's office or a Federal judge for advice.

The Grand Jury appeared in Fake's court, after attending a regular session. Rossbach entered the courtroom after the jurors had completed their remarks. He had just concluded his summation in the trial of three men, charged with selling a dwelling to a veteran in excess of the price ceiling, in which he won a guilty verdict.